

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DARWIN SCHMIDT,

Plaintiff,

v.

Case No. 05-C-0026

**MICHELLE EGGERS, LAURA MICKLESON,
ELAINE STIPEVITCH, STACY SNEIDER,
LISA KENYON, PHILIP BREHM,
GREGORY HUNSADER, DEBRA SMITH,
JENNIFER MORGAN and THOMAS QUELLO,**

Defendants.

DECISION AND ORDER

Plaintiff, Darwin Schmidt, filed this pro se civil rights complaint pursuant to 42 U.S.C. § 1983. Prior to bringing the action, plaintiff filed a petition for writ of habeas corpus concerning the same events. See Schmidt v. Borgan, No. 04-C-1159 (E.D. Wis.). Because plaintiff could not succeed in the present case unless he first prevailed in his habeas petition, I stayed the proceedings in this case pending the resolution of Schmidt v. Borgan, No. 04-C-1159.

Plaintiff's petition for writ of habeas corpus was denied on August 1, 2005. Plaintiff subsequently appealed and his request for certificate of appealability was denied by the Court of Appeals for the Seventh Circuit on May 14, 2007. On that same date, the Seventh Circuit affirmed my judgment of August 1, 2005, and the record was returned to this court.

Inasmuch as plaintiff's habeas petition has been resolved, and judgment has been entered in favor of the respondent, plaintiff cannot prevail on any of the claims in his § 1983

action. See Post v. Gilmore, 111 F.3d 556, 557 (7th Cir. 1997); Tallmadge v. Boyle, 300 Wis. 2d 510, 524-26 (Wis. Ct. App. 2007). Therefore, this case will be dismissed.

CONCLUSION

For the foregoing reasons,

IT IS THEREFORE ORDERED that this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 5 day of February, 2008.

/s _____
LYNN ADELMAN
District Judge